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DEC 12 2003

Paper No. 14

In re Application of  
Richard A. Brandt  
Application No. 09/971,830  
Filed: October 4, 2001  
Attorney Docket No. 0200528-0006

DECISION ON PETITION

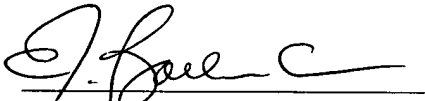
This is a decision on the petition filed on September 29, 2003 and resubmitted by facsimile transmission on Nov 3, 2003 by which petitioner requests withdrawal of the examiner's holding that this application stands abandoned for failure to file an appeal brief. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

Petitioner alleges that the application is not abandoned because the appeal brief was timely filed, albeit with an incorrect application number affixed thereto. Petitioner supports this allegation by furnishing a copy of the appeal brief as filed, and by noting that as filed, the appeal brief had a "certificate of Express Mail" affixed thereto which is dated April 21, 2003. In addition, petitioner has furnished a copy of an Express Mail Label showing that the item mailed was deposited with the United States Postal Service on April 21, 2003. In accordance with 37 CFR 1.10, the copy of the Express Mail Label, together with the Express Mail Number that is affixed to the copy of the appeal brief, is sufficient evidence to establish the filing of the appeal brief on April 21, 2003. As the transmittal letter accompanying the appeal brief included an authorization to the appeal fee and to charge "any additional fee(s) during the pendency of this application", it is clear that the appeal brief was timely filed (in view of the 37 CFR 1.136(a) constructive petition for a two month extension of time resulting from the authorization to charge "any additional fees"), and the application is not abandoned.

Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the Head Supervisory Applications Examiner to charge Deposit Account 50-1628 in the amount of \$160.00 for the appeal brief fee and in the amount of \$205.00 for a two month extension of time. Thereafter, the application will be forwarded to the Supervisory Patent Examiner of Art Unit 3711 who will direct the examiner to take special action on the appeal brief filed on April 21, 2003.

PETITION GRANTED.

  
E. Rollins-Cross, Director, Patent  
Examining Groups 3710 and 3720

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